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04 May 2017

Dear Members of the Criteria and Standards Subcommittee of the OGP,

As you are aware, one year ago, on 4 May 2016, the OGP Steering Committee, gathered in Cape Town to designate the Government of Azerbaijan as “inactive” under the terms of the Policy on Upholding the Values and Principles of OGP articulated in the Open Government Declaration. In doing so, the OGP Steering Committee recognised that the Government of Azerbaijan had failed to uphold its commitment to OGP values and principles.

Doubts about the Government of Azerbaijan’s adherence to these values - in particular to “protecting the ability of not-for-profit and civil society organisations to operate in ways consistent with our commitment to freedom of expression, association, and opinion”- had been raised in a complaint filed by ARTICLE 19, CIVICUS and Publish What You Pay in March 2015. The organisations highlighted the Government of Azerbaijan’s failure to foster collaboration between government and civil society by imposing significant constraints in the operating environment for NGOs.

A year has passed since the decision of the OGP Steering Committee. We understand that your subcommittee will be undertaking a review of whether the government of Azerbaijan has taken appropriate steps to remedy the grievances exposed in the original letter of complaint. We, and local civil society actors, thus urge you to extend this period of “inactivity” for another year as no significant improvements have been noted in the country. We have included an overview of developments concerning civic space in Azerbaijan over the past 12 months to support our call.

We acknowledge that the Government of Azerbaijan has shown some willingness to address obstacles that prevent independent civil society from promoting government transparency and accountability. However, we, together with our partners and member organisations in the country, remain deeply concerned by the ongoing harassment of civil society. We believe that the Government of Azerbaijan can greatly benefit from cooperating with the OGP Support Unit. But the country’s government needs to make further progress in implementing meaningful and time-bound reforms to improve the operating environment for civil society before being restored as a full and active member of the OGP.

Background

The OGP Steering Committee decision¹ to make Azerbaijan “inactive” enforced stage two of the OGP Response Policy. This came after the Government of Azerbaijan failed to record sufficient progress in addressing the recommendations of the Criteria and Standards Subcommittee which, in May 2015, had concluded that the concerns raised in the original complaint should be upheld, thereby triggering phase one of the OGP Response Policy.

To review progress made by the Government of Azerbaijan during phase two, the Criteria and Standards Committee is expected to look at its recommendations issued in May 2015², taking into consideration adjustments of the original timeline. The government of Azerbaijan was requested to complete the following steps to restore an enabling environment for civil society:

1. **Timeline for the next National Action Plan.** The Government of Azerbaijan was requested to submit its new plan by 30 December 2015, to begin implementation on 1 January 2016.
2. **Consultation with civil society.** The Government of Azerbaijan was asked to meaningfully consult with civil society organisations and citizens in the creation of its new action plan according to OGP requirements.
3. **Peer exchange and technical support.** The Government of Azerbaijan was invited to take advantage of peer exchange and lessons on questions relating to NGO cooperation work.
4. **Commitments to improve the operating environment for civil society.** The Government of Azerbaijan was requested to consider including commitments in the new action plan that specifically address concerns regarding the functioning of the Law on Grants, Law on Non-Governmental Organisations, Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offenses. The Government of Azerbaijan was also asked to submit evidence on progress towards these reforms at the three and six-month points of implementation following the release of the new action plan in 2016. Those reports would be evaluated as part of the progress towards resolving the original Response Policy concerns, with the reports being sent to the full Steering Committee.
5. **Working with the OGP Steering Committee.** The Government of Azerbaijan was invited to participate in a teleconference in August 2015 to discuss the consultation process and be available for on-going support throughout the new action plan development process.³

Current Situation

In January 2017, the Government of Azerbaijan modified several regulations governing funding for nongovernmental organisations. The modifications followed the October 2016 decision by the Board of Directors of the Extractive Industry Transparency (EITI) Initiative requiring the government to address a number of legislative and operational obstacles to civil society engagement in the Initiative.

¹ The full decision is available here:

<http://www.opengovpartnership.org/sites/default/files/attachments/OGPSteeringCommitteeResolutiononAzerbaijan-2.pdf>

² These can be accessed here:

<http://www.opengovpartnership.org/sites/default/files/CS%20resolution%20on%20Azerbaijan.pdf>

³ For more information, please consult the OGP Criteria and Standard Subcommittee Briefing: Proposal for dialogue with Government of Azerbaijan, July 6, 2015.

The changes enacted by Azerbaijani authorities, however, are limited to only certain rules and do not address the fundamental legislative obstacles to NGO funding. Indeed, since our 29 April 2016 letter, the Government of Azerbaijan appears to have made neither substantive nor sustained improvements in the operating environment for civil society.

The new regulations simplify some procedures for the registration of foreign grants and reduce the number of required documents. However, they leave in place the problematic legal requirement for NGOs to register grants, the requirement for the Ministry of Finance to provide an opinion on the expediency of each grant from a foreign donor, and the multi-step complex registration procedure for grants involving foreign donors.

Most importantly, the regulatory changes do not eliminate the discretion of the authorities to arbitrarily deny grant registration. Nor do the regulatory changes address the deeply entrenched legal barriers to effective functioning of NGOs. Indeed, despite the announcement in October 2016, prior to the EITI Board meeting, that the government would ensure the registration of several members of the NGO coalition for Increasing Transparency in the Extractives Industry, the situation remains extremely difficult for local NGOs, who continue to face severe obstacles to their registration.

We are additionally concerned by the ongoing harassment of NGOs, bloggers and journalists over the past year. Our concerns include the following:

- The bank accounts of several human rights NGOs remain frozen. Some progress has been made to unfreeze the accounts of NGOs but in many cases the organisations are unable to utilise the funds as they cannot register the grants connected to these funds.
- Politically motivated criminal prosecutions are continuing. We welcome the release in May 2016 of Khadija Ismayilova, an investigative journalist, a month after the April 2016 submission, taking the number of activists, journalists, and bloggers released between the end of 2015 and May 2016 to 19. However, none of the released have had their verdicts quashed; and several, including Ismayilova, face travel restrictions. Many have left the country fearing further politically motivated persecution, or have had to halt their work due to bureaucratic hurdles hampering their access to funding.
- Several activists, journalists, and bloggers have not been pardoned and remain behind bars. Among them is Ilgar Mammadov, leader of the pro-democracy opposition movement Republican Alternative (REAL), whom the Azerbaijani authorities have refused to release, despite a 2014 European Court of Human Rights decision on his case and repeated demands by the Council of Europe's Committee of Ministers to release him.
- Arbitrary arrests of activists are continuing. Since April 2017, the authorities have arrested at least 10 more individuals on highly questionable criminal charges. Among the victims is a well-known blogger, Mehman Huseynov, who in March 2017 was sentenced to two years in prison for defaming a police chief, after he went public about abuse he had suffered at the hands of police officers. Huseynov is the first person in six years to be sentenced in Azerbaijan on criminal defamation charges.
- Authorities have also harassed the relatives of those attempting to carry out their activism from abroad, in some cases by bringing criminal charges against them.
- Media freedom remains under attack, and Azerbaijani authorities have taken multiple steps to restrict the plurality of opinions expressed in the country, including by blocking several independent and opposition news websites. The Ministry of Transport, Communications and High Technologies has filed a lawsuit to have these websites banned permanently.
- We welcome the fact that a media and civil society training on OGP engagement took place in March 2017 with the support of the Natural Resource Governance Institute but note with concern the limited cooperation and consultation with a broader range of civil society actors

on the implementation of the 2016-2018 National Action Plan. We echo the concerns of local civil society actors working on government transparency and accountability about the lack of information publicly available on progress made so far in implementing the National Action Plan.

Next steps

We believe that the meaningful reforms have not been undertaken meriting Azerbaijan's restoration to full status as an active member of the OGP. CSOs in the country are unable to operate freely and independently despite limited revisions to NGO legislation. This seriously hampers civil society actors' ability to participate in and influence Azerbaijan's OGP Action Plan.

In addition, we believe that the ongoing case of Azerbaijan highlights the need to revisit the current eligibility criteria, which would still permit Azerbaijan to qualify as an eligible OGP country, despite profound restrictions weighing on local civil society actors. Given the challenge this poses to the credibility of the initiative, we recommend the OGP address this discrepancy, particularly with relevance to the source data used to measure the civil liberties component of the eligibility criteria.⁴

We believe that the OGP should continue to pursue engagement with Azerbaijan, through peer exchange and active engagement with the OGP Support Unit, Steering Committee and the wider civil society network and OGP partners. This engagement should be based on solid commitments to implement concrete measures that will achieve sustainable reform towards Azerbaijan meeting the commitments articulated in the Open Government Declaration.

In particular, we call for the following steps to be recommended to the Government of Azerbaijan in order to re-establish the committed space for civil society actors to function freely and to promote government transparency and accountability:

- **Legal and bureaucratic hurdles that currently undermine freedom of expression, assembly and association should be removed.**
 - The Law on Grants, Law on Non-Governmental Organisations, Law on Registration of Legal Entities and State Registry, the Code on Administrative Offences and Criminal Code should be suitably amended and their implementation overseen to bring them in line with international standards regarding the rights to freedom of expression, association and assembly. In particular, the Government of Azerbaijan should implement recommendations made by the Venice Commission in 2014, reinforced during the fact finding mission of the Council of Europe Parliamentary Assembly Monitoring Committee in January 2017.⁵ The problems inherent in Azerbaijan's laws governing NGOs were also clearly articulated by the European Court of Human Rights in *Jafarov v. Azerbaijan* in March 2016.⁶
 - The Government of Azerbaijan should simplify procedures for establishing and registering NGOs and ensure that CSOs are not subject to discretionary actions that limit their ability to operate. In particular, the requirement for NGOs to obtain an

⁴ The current list of eligibility scores, accessed on 1st May 2017, shows that Azerbaijan scores 12 out of 16, or 75% thus still making it eligible for OGP membership:
<https://docs.google.com/spreadsheets/d/1kRgVWEjPpqlpD8zBXhNA4lh3wIWwL0JH9aWTuZn8J2E/edit#gid=869039115>

⁵ Honouring of obligations and commitments by Azerbaijan - Information Note on a Fact Finding Mission to Baku (12-14 January 2017), Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe. <http://website-pace.net/documents/19887/3136217/AS-MON-2017-06-EN.pdf/ccceb9b-5c79-48e7-9f66-3e6b330aca49>

⁶ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)043-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)043-e)

extract (registration certificate) every two years confirming their registration and which serves as the basis for NGOs' operation should be removed.

- The Rules on Studying the Activities of Non-Governmental Organisations, Branches or Representative Offices of Foreign Non-Governmental Organisations, introduced in 2016, should be amended to prevent undue intrusion of the Ministry of Justice into the affairs of NGOs and to safeguard their independence.
- **NGOs should be permitted to access and utilise financial resources freely, including from abroad.**
 - The Government of Azerbaijan should review bogus tax-related cases and fines levied against several NGOs, which are preventing them from accessing funds in their accounts and impeding their work. Rules and regulations placing undue restrictions in accessing grants from international donors should be thoroughly reviewed.
 - In particular, the government should eliminate the need for NGOs to register grants with the Ministry of Justice, and eliminate the need for foreign donors to register individual grants with the authorities and obtain an opinion on the expediency of the grant.
- **Steps should be taken to restore an environment in which civil society actors are able to speak out openly, including about government transparency and accountability.**
 - Civil society activists and journalists imprisoned on politically motivated charges, including, but not limited to, Ilgar Mammadov, Mehman Huseynov, Asif Yusifli, Fuad Gahramanli, Mammad Ibrahim, Seymur Hezi and Ilkin Rustemzadeh, Fuad Ahmadli, Faig Amirov, Elgiz Gahraman, Giyas Ibrahimov, and Bayram Mammadov should be released.
 - All 19 prisoners released in 2016 and 2017 should have their verdicts vacated, and travel restrictions lifted.
 - Orders should be issued to security agencies to refrain from politically motivated arrests and the harassment of NGO leaders.
 - The practice of restricting activism online, specifically through the targeting of bloggers and online journalists, should be discontinued. Also, the practice of permanent blocking of independent news websites should be discontinued.
- **Full and open engagement with civil society in implementing the 2016-2018 Action Plan should be undertaken**

The implementation of Azerbaijan's Second Action Plan, which is due to run from 2016 to 2018, should be subject to wide-ranging public consultation in line with OGP commitments. This should involve a diverse range of civil society actors from across the country. For civil society to be able to monitor progress made on implementing the NAP, it is also essential that the Government of Azerbaijan shows greater commitment to the principle of transparency by ensuring greater disclosure of information relative to the implementation of the NAP. In this perspective, the government's withdrawal from EITI throws up questions about its ability to carry out EITI commitments contained in the Second NAP. We therefore welcome the intention to create a Transparency in Extractives Commission but stress the need to ensure that local civil society actors are represented on that new oversight body.

We believe that it is essential that the Government of Azerbaijan moves beyond superficial amendments of its stifling NGO laws. Anything less would put the credibility of the OGP seriously at risk, as civil society will remain unable to participate in the process, undermining one of the main principles of the partnership.

We remain committed to work with OGP stakeholders and partners in Azerbaijan to implement these steps in the near future to allow Azerbaijan to reengage in OGP as an active participating government. We thank the Subcommittee members for their continued and strong commitment to the Values and Principles of OGP. We are ready to provide any additional information or support that the OGP may need to achieve this goal.

Yours sincerely,

Thomas Hughes,

Dr Danny
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Elisa Peter,

Hugh Williamson,

Executive Director

Secretary General

Executive Director

**Europe and Central
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ARTICLE 19

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Human Rights Watch

**CIVICUS, World
Alliance for
Citizen Participation**

